

AUG 22 2007

JOHN F. CORCORAN, CLERK
BY: 
DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

United States of America,
Petitioner

v.

Thomas T. Scambos, Jr.,
Respondent

CASE NO. 3:07-MC-00011

SWORN AFFIDAVIT OF
THOMAS T. SCAMBOS, JR.

I, Thomas T. Scambos, Jr., Respondent, do solemnly swear by this declaration that:

1. I am a Citizen of the Commonwealth of Virginia, born in Norfolk, Virginia on April 17th, 1957. I am not now, nor at any time over the last 20 years have I been engaged in any activities that are subject to any indirect federal tax, or that would require that I keep any books and records for government inspection. I have never sold any alcohol, tobacco, firearms, gasoline fuels, airline tickets or any other items or products subject to any Federal tax that would require record-keeping, and I do not engage in or conduct any import or export activities that would require record-keeping for the government, and I have no business dealings with foreign persons.
2. Approximately on or about Thursday, March 15th, 2007 I received an IRS Letter 1844 from a Gayle Hunter, Internal Revenue Agent, accompanied by an IRS Form 4564, purporting to have scheduled for me an appointment with the Agent in 12 days on March 27, 2007 at the IRS offices in Richmond, Virginia. (Exhibit A)
3. Included in that package was an IRS Notice 609 (Exhibit B) stating that : "...when we ask you for information, we must first tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if you do not provide it and whether or not you must respond under the law."

4. Approximately on or about Friday, March 16th, 2007 I received a phone call at my home from Agent Gayle Hunter, who inquired if I had received the letter. She wanted to confirm the scheduled appointment.
5. I asked Agent Hunter if this was a criminal investigation and she responded "Not yet", admitting that this is intended to become a criminal investigation at some time in the future – **and therefore it is now**, despite what is claimed by the United States. **This forum is inappropriate for collecting evidence from an individual that is intended to be used against that individual in a criminal prosecution.**
6. I asked Agent Hunter if these allegations being investigated were not potentially criminal allegations, and she responded "Yes."
7. I asked Agent Hunter if the Constitution of the United States of America doesn't prohibit the government from compelling a person to provide evidence that may be used against that person in a criminal court of law, and she responded: "That doesn't matter"
8. I told Agent Hunter that I felt that my Rights under the Constitution of the United States of America were being violated by this attempt to compel me to appear and testify against myself in a criminal matter, and she replied: "They don't apply"
9. I then told Agent Hunter that I had some concerns that had been raised by the IRS Notice 609 I had been sent with her material, and that I would respond to her in writing within a few days, asking her to address those Notice 609 concerns and requirements before meeting with her, as required by the clear language of the Notice 609, and the phone call ended.
10. On March 26th, 2007, I mailed by certified mail a letter to Gayle Hunter Titled "*EXERCISE OF RIGHTS – Assertion of Rights to Information and for Specification and Clarification of Rights Secured Under IRS Notice 609*" asking for the Agent to provide the information that Notice 609 states I am entitled to have before being compelled to meet with an Agent of the Service to provide books and records (Exhibit C).
11. In that letter I included for Agent Hunter a copy of the Internal Revenue Manual, Chapter 1100, Section 1132.75 (Exhibit D) which identifies the investigative jurisdictional authority of the Internal Revenue Service to conduct investigations of potentially criminal charges.
12. I requested that Agent Hunter provide some statement of jurisdictional authority that would show her authority is extended beyond that limited authority shown in the Internal Revenue Manual at Section 1132.75 to **only** conduct investigations of potential criminal allegations involving **foreign persons** in America.

13. Agent Hunter adamantly refused, and refuses still, to provide any statement of jurisdiction or authority for the legal record that would assert or even indicate that she has any jurisdiction at all in these matters over Respondent (a Citizen) to conduct an investigation of potentially criminal charges.
14. The only statement of jurisdictional authority on this court's record in this case is the authority provided by Internal Revenue Service Manual at Section 1132.75 to investigate foreigners. The Federal government possesses no Territorial jurisdiction in these matters and the only subject matter jurisdiction they may possess is that of indirect taxation. Respondent demands a showing of I.R.S. jurisdiction over his person, and to investigate citizens rather than foreigners, be brought forth onto the record of this case by the United States or this matter should be dismissed for lack of ability to show any jurisdiction over Respondent's person.

15. As a result of Agent Hunter's:

- a. telling respondent that the Constitution doesn't apply,
- b. telling Respondent that his Rights under it don't matter,
- c. refusing to provide any showing of Jurisdictional authority when requested, and
- d. refusing to provide the information that Respondent is entitled to have (and that the Agent is required to provide) under Notice 609;

Respondent feels certain that Constitutional Due Process requirements have been violated by the Agent and no longer felt obliged to perform as demanded, or obliged to co-operate with the agent in her investigation.

16. As a result of Agent Hunter's legal failures to perform as required under Notice 609, and to recognized the established limits of her jurisdictional authority under the Constitution of the United States of America and the Internal Revenue documents that had been provided to her, Respondent did not appear at the appointment that Agent Hunter had scheduled without his consultation or consent for the purpose of allowing the inspection and examination of books and records by the Agent.
17. On or about April 26th, 2007, Respondent was given at his residence by Agent Hunter a package containing a purported Summons to appear in person, demanding appearance by the Respondent on May 7th, 2007 at the IRS offices in Richmond, Virginia.
18. On May 1st, 2007 Respondent sent to Agent Hunter by certified mail a Petition to Quash the Summons (Exhibit E) based on the fact that the Summons is defective, fatally flawed and legally unenforceable because it had been issued without

allowing for a lawfully required period of time to allow for a reasonable legal response to the Summons by Respondent before being forced to appear. The Summons attempted to require the appearance of Respondent in just 11 days. The Petition makes clear that the law requires a minimum of 20 days to be allowed before appearance can be demanded. This, of course, is to provide for the DUE PROCESS requirement of allowing both sides of a dispute to participate in the process and enter pleadings, and for both sides of a legal dispute to be heard in an appropriate legal forum.

19. Respondent believes this Summons is still fatally flawed and fatally defective for the above reason and further believes that this Summons should not be perfected for the government by the court because of the following facts:
20. Agent Hunter, in her *Declaration (Exhibit F)* states: “2. *I am conducting an investigation of a possibly abusive tax scheme organized and promoted by ...*”, but she fails to actually identify any alleged “scheme” or any alleged “abuse” that Respondent may be involved with to cause the investigation to have been initiated. Respondent has never promoted anything but a complete knowledge of the law. There is no “abusive tax scheme” that exists. This is an attempt by the Agent to mislead the court as to the true nature of the intent of this investigation and the true source of its initiation.
21. Agent Hunter, in her *Declaration* states: “4.*The investigation also may result in, if appropriate, a request to the Department of Justice to enjoin Scambos, pursuant to I.R.C. §7408, from further promoting abusive tax schemes*”. Respondent believes this language is used to mislead the court and deceive it into believing that there is some knowledge or evidence in the Agent’s possession that Respondent has done this (promoted abusive tax schemes) in the past and must be stopped from **further** involvement. Respondent has never promoted any abusive tax scheme, only a complete knowledge of the law, as evidenced on the web site.
22. Agent Hunter, in her *Declaration* states: “5. *I am also investigating Scambos for potential sanctions under I.R.C. §6694 and 6695 for abusive tax return preparation*”, but again she fails to identify or provide any Return allegedly prepared by Respondent, she fails to identify any individual for whom it is alleged respondent prepared a Return, and she fails to identify any witness who claims I told them how to file (or not file) any return. It is a false allegation that Respondent has ever engaged in any activity related to the filing of any tax returns for other individuals. Respondent has never offered or provided this service to anyone, at any time.
23. Agent Hunter, in her *Declaration* further states: “5.*The investigation also may result in, if appropriate, a request to the Department of Justice to enjoin Scambos from further preparing tax returns pursuant to I.R.C. § 7407.* ”. Respondent

believes that the word "**further**" is again used to mislead the court and deceive it into believing that there is some positive knowledge or actual evidence in the Agent's possession that Respondent has prepared Returns for others in the past and must be stopped from **further** involvement in tax return preparation services. Respondent has never offered or provided tax return preparation services to anyone, ever, nor has Respondent ever instructed any persons on how to fill out (or not fill out) any tax return forms. The Agent is lying to the Court about Respondent being involved with preparing tax returns for other people. It's just not true.

24. Respondent did have a small office (R-Safe) from 1994 to 2000 in Arlington, Virginia, and did assist people with learning how to properly use the law to answer IRS correspondence they had received during those years. The information that Respondent gave to people is the same information now available for free over the website. And again, Respondent never offered or provided tax preparation or filing guidance services to any persons at any time. Further, Respondent has never been involved in any warehouse or private banking system to hide assets or income, and Respondent has never advocated the use of offshore trusts to try and evade federal income tax. Respondent knows that evasion is a crime and, when asked, has always been very careful to point out that when you break the law you are illegally evading tax, but that when you use the provision of the law it is possible to legally reduce or avoid tax without violating the law or its requirements. Lawful tax avoidance is not a crime, it is distinctly different from tax evasion in that tax evasion involves breaking the law and tax avoidance relies on utilizing the explicit provisions of the law that operate in one's favor.
25. Respondent closed the R Safe office and ceased all IRS and tax related activities sometime around December 2000 or January 2001. Respondent is mystified that now, 7 years later, the IRS is opening an investigation into someone who has not had any involvement in any tax related activities for over 7 years - other than to maintain a web site on the internet that teaches people the law (using the online law library at Cornell University) and exposes the questionable actions of the IRS.
26. Because that office was closed over 6 years ago, there are, of course, no materials or records left to turn over to Agent Hunter, other than what is available over the internet from the Website to anyone for free. The IRS already has those materials, but obviously can't find anything in them to use to base an allegation of a violation of law upon or they would have presented them to the court as evidence of the commission of a crime by Respondent to support the enforcement of the Summons. The Summons is unenforceable because it seeks materials that no longer exist.
27. Further, Respondent believes that the Summons is unenforceable because 16 of the 18 entities (companies) listed in the Summons, whose books and records are actually being Summoned, do not belong to the Respondent, but rather belong to

other people, primarily Respondent's father, a retired Naval fighter test pilot Captain with the same name as Respondent (minus the Jr.), but who has absolutely nothing to do with any of these tax matters. Agent Hunter hasn't even bothered to check to see if the individual in question for each of these entities was the Respondent or his father. Respondent cannot possibly produce any books and records or any other materials for that matter for any of those entities because he has no involvement with those entities.

28. On May 10th, 2007 Respondent made a FOIA request of the IRS Disclosure Officer (Exhibit G) in order to secure, among other things, proof that Respondent has never been given any legal Notice by the IRS as required under IRC § 6001 (Exhibit H) that he has a requirement to keep any books and records. Respondent asserts that he has never received any legal Notice from the IRS that he is responsible for keeping any books and records that the IRS may Summons.
29. Respondent has not been employed by any company in almost 20 years, and has never been an employer himself, and thus, has no record-keeping responsibilities (or books and records to deliver to Agent Hunter) associated with employment under Subtitle C.
30. The United States argues (Memorandum pg. 4, prgph A.1.) that IRC § 7601 provides the authority to "*inquire as to all persons who may be liable to pay any internal revenue tax. ... To determine the ...liability of any person for any internal revenue tax or penalty, the IRS may examine any books, papers, records, or other data...*" Clearly the authority to Summons is established for the purpose of identifying persons who are liable to pay any tax.
31. The United States fails to identify any statute that actually does make any person liable for any tax in its brief, apparently assuming that liability may exist in these matters to justify the Summons.
32. Respondent re-asserts that he has absolutely no involvement at all with any taxable activities under Subtitle C or Subtitle E, and therefore it is impossible for him to have any liability at all regarding the taxes imposed by those Subtitles of Title 26.
33. Respondent knows that the only liability for tax within Subtitle A is established and imposed under Section 1461 (Exhibit J) and reconfirmed under I.R.C. §1463. Respondent knows that it is the "Withholding Agent" (I.R.C. § 7701(a)(16) Exhibit K) who is made liable for the tax, because the I.R.C. code section clearly states it, and the Supreme Court tells you so on page 12, paragraph 2, of the *Brushaber v. Union Pacific R.R. Co.*, 240 US 1 (1916) case opinion deliver by Justice White. (Exhibit L).

34. Respondent has no liability for tax under IRC § 1461 since he has no business with foreign persons and thus, has no duty to withhold from them, and thus can have no liability for tax under Subtitle A as proscribed by Section 1461.
35. Agent hunter and the DOJ refuse to say how, or under what other IRC code section liability for tax is otherwise determined under the law.
36. Respondent knows that the *Brushaber v. Union Pacific R.R. Co.*, 240 US 1 (1916) case, is the case wherein the Supreme Court determined that the income tax is Constitutional. In the Opinion of the Court delivered by Justice White he states on page one, in paragraph one: "...the appellant filed his bill to enjoin the corporation from complying with the income tax provisions of the **tariff** act of October 3, 1913." Justice White clearly labels and identifies the Income Tax Act as an Act imposing a **tariff**.
37. A **tariff** is a **FOREIGN** tax which is why the IRS **only** has jurisdiction to investigate **foreigners** outside of Title 27 Alcohol, Tobacco and Firearms activities
38. The CFR Index and Finding Aids (Exhibit M) tables clearly show that the Authority to Summons books and records has been published in the Federal Register as being applicable to Citizens only within context of Title 27 enforcement operations.
39. Shortly after the Brushaber Supreme Court decision the United States Treasury Department issued Treasury Decision 2313 (exhibit N) clearly stating that foreign persons are the subject of the Subtitle A income tax.

Conclusion

Agent Hunter has stated that she feels the Constitution of the United States of America doesn't matter, and has demonstrated that she will not honor my Rights under it (or the law), because she feels they (my Rights) do not apply. She has demonstrated that she will not obey the law she claims to represent and she has attempted to mislead the court about Respondent being involved in the preparation of tax returns for other people. In the eyes of the Respondent, the Agent no longer possesses a credible legal authority that should be respected in these matters.

Respondent believes that this investigation has not been initiated out of legitimate tax concerns or reasons, or because of any evidence against him or act(s) committed by him. Respondent believes this investigation has been unlawfully ordered by a supervisor of the

Agent, without any true tax basis or concern at the heart of the investigation at all, but rather, a desire to try and shut down a website that uses the law to expose the questionable actions of the I.R.S.

The FOIA request (Exhibit G) made by Respondent on May 10th, 2007 (See paragraph 28 above) of the IRS Disclosure Officer, was attempting to also secure information from the I.R.S's own computer files that Respondent believes may help the court to see and understand that there is no legitimate cause or reason based in law reflected within that computer system that would normally justify or cause the opening of any investigation.

Respondent believes that the issuance of this summons constitutes an unlawful misuse of the taxing authorities, motivated by political differences, to try to effect and apply a Federal police power that otherwise does not exist to be exercised or applied by the government in the fifty states. It is a clear misuse of the taxing authority to use taxation as a guise and pretense to effecting a police power over the Citizens of the United States.

In United States v Lopez, No. 93-1260, 115 S. Ct. 1624, 131 L.Ed. 2d 626, the court asserts in determining that the government was acting outside of its territorial jurisdiction (pg. 64):

“the Federal government has nothing approaching a police power.”

In United States v Powell, 379 US 48 (1964), at page eight of the opinion, the Court states :

“The Commissioner ... must show that the investigation will be conducted pursuant to a legitimate purpose”

and, that the Respondent:

“may challenge the summons on any appropriate ground,” Reisman v Caplin, 375 US 440 at 449. Nor does our reading of the Statutes mean that under no circumstances may the court inquire into the underlying reasons for the examination. It is the court’s process which is invoked to enforce the administrative summons and a court may not permit its process to be abused. Such an abuse would take place if the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular action.”

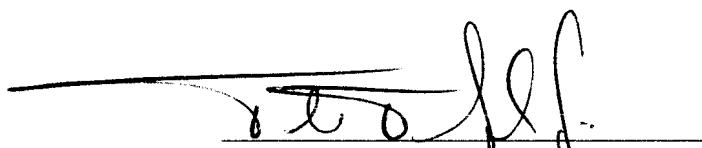
Agent Hunter must be forced to take the witness stand to testify as to how this investigation became one of her investigational cases. Did this case come to her through normal working channels ? Was it assigned to her within the computer system as with normal investigations, or was she specifically ordered by a supervisor to undertake this investigation without probable cause, and without

being given any true legal cause or reason for the investigation other than to harass those responsible for the website that the IRS wants removed from the internet ?

While the Agent certainly describes in her *Declaration* what she is doing, providing the nature and description of her investigation, she never states or establishes the **cause** (probable or otherwise) of this investigation. Respondent believes that this is not a legitimate tax investigation that has been legally initiated (because his tax assistance office has been closed for over 6 years). Respondent believes that the Agent has been unlawfully ordered to investigate Respondent based on a Supervisor's order, unsupported by fact and without any real tax basis or legal cause being provided to her (the Agent) for the initiation of the investigation, other than the existence of a website, which is not a legitimate or legal use of the taxing authority.

Enforcement of the instant Summons would constitute an abuse of the Court's process as identified and described in Powell above.

Respectfully submitted this 21st day of August, 2007.

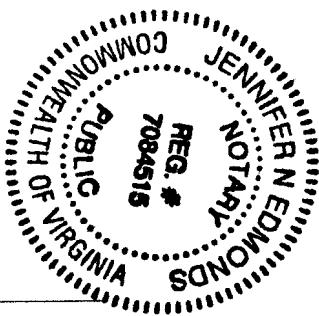


Thomas T. Scambos, Jr.
19400 Walnut Hills Rd
Jeffersonton, VA 22724

The foregoing was subscribed and sworn to before me, a Notary Public,
of the State of Virginia, County of Fauquier
this 21 day of Aug, 2007.

Jennifer N. Edmonds
Notary Public

My Commission Expires On: 12.31.2011



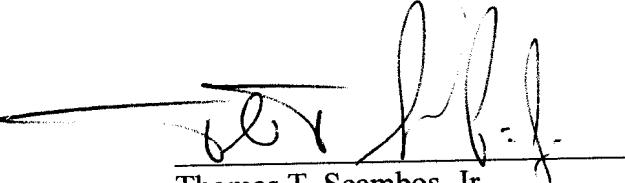
CERTIFICATE OF SERVICE

I, Thomas T. Scambos, Jr., certify that a true copy of the attached *SWORN AFFIDAVIT OF THOMAS T. SCAMBOS, JR.* has been served via ~~Certified Mail~~ to the following:

FAX

Thomas W. Curteman, Jr., Trial Attorney
U.S. Department of Justice
P.O. Box 7238
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Certified Mail #



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